

Before the
Administrative Hearing Commission
State of Missouri



DEPARTMENT OF HEALTH & SENIOR
SERVICES, BUREAU OF EMERGENCY
MEDICAL SERVICES,

Petitioner,

vs.

JESSICA AUDSLEY,

Respondent.

No. 13-0986 DH

DECISION

Jessica Audsley is subject to discipline because she pled guilty to the crime of domestic assault in the second degree.

Procedure

On June 6, 2013, the Department of Health & Senior Services, Bureau of Emergency Medical Services ("the Department") filed a complaint seeking to discipline Audsley. On June 13, 2013, Audsley was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. Audsley did not file an answer. The Department filed a motion for summary decision on August 12, 2013. We notified Audsley that she should file any response by September 13, 2013, but she filed nothing.

By failing to answer or otherwise respond to the complaint, Audsley has admitted the allegations contained therein. 1 CSR 15-3.380(7)(C)1.¹ By failing to respond to the motion for summary decision, she has also failed to raise a genuine issue as to the facts the Department established in its motion. 1 CSR 15-3.446(6)(B).

Accordingly, the findings of fact are based on the allegations contained in the complaint and the documents submitted with the Department's motion for summary decision: the Department's own records regarding Audsley's licensure, the EMT-Basic National Standard Curriculum, and certified copies of criminal records. The following findings of fact are undisputed.

Findings of Fact

1. Audsley is licensed by the Department as an emergency medical technician ("EMT-Basic"). Audsley's license was current and active at all relevant times.
2. On July 4, 2012, during a domestic dispute, Audsley stabbed her husband and caused physical injury to him.
3. On July 5, 2012, a probable cause statement against Audsley was filed in the Circuit Court of Lafayette County, stating in part:

On July 4th, 2012 at approx. 13:14 hours Captain Lamphier and I were dispatched to 603 S. 18th Street for a report of a stabbing and the female suspect was possibly under the influence of narcotics. When we arrived we located the female suspect Jessica Audsley on the front porch with her small daughter. Jessica said she stabbed her husband who we located and identified as T.A. T.A. had a cut to his arm and leg and was covered in blood and scratches. The weapon was recovered in the laundry room and the scene was photographed. When placed in hand cuffs it appeared that Jessica was under the influence due to her weaving.

¹ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

After being read the Miranda warning and signing a waiver Jessica said she and T.A. are divorcing and she had a bad weekend and took a Xanax [sic] pill the evening of July 3rd and slept until 10:00 am July 4th. She made plans to spend the day with her daughter and when she went to leave T.A. took the keys and refused to let her leave with their daughter because he thought she was under the influence of medication. Jessica said they fought for the keys and went from the back deck to the laundry room and she went into the kitchen and got a knife then she returned to the laundry room where she claims T.A. lunged at her and in fear she stabbed him not trying to kill or hurt him. Jessica claims she has been a victim of domestic violence in the past.^[2]

4. On September 4, 2013, an Information was filed against Audsley in the Circuit Court of Lafayette County, stating:

The Prosecuting Attorney for the County of Lafayette, State of Missouri, upon information and belief charges the defendant in violation of Section 565.072, RSMo, committed the class B felony of domestic assault in the first degree, punishable upon conviction under Section 558.011, RSMo, in that on or about July 4, 2012, in the County of Lafayette, State of Missouri, the defendant stabbed T.A., and such conduct was a substantial step toward the commission of the crime of attempting to cause serious physical injury to T.A., and was done for the purpose of committing such assault, and T.A. and the defendant were family or household members in that T.A. was the spouse of the defendant.^[3]

5. On December 7, 2012, Audsley entered a plea of guilty to the amended charge of domestic assault – 2nd degree, a Class C felony, in violation of § 565.073.⁴

6. Audsley received a suspended imposition of sentence and was sentenced to five years' supervised probation, with conditions including no alcohol, no contact with T.A., shock detention, community service, drug testing, and counseling for anger control. The terms of the sentence also allowed Audsley to return to court no earlier than eight months after the date of her plea and upon completion of her anger control counseling and with no probation violations, and

² Ex. 2 to Department's motion.

³ *Id.*

⁴ Statutory references are to the RSMo Supp. 2012 unless otherwise indicated.

to withdraw the Class C felony plea and plead to a Class A misdemeanor assault charge for which she would receive a one year sentence with two years' supervised probation.

Conclusions of Law

We have jurisdiction to hear this case. §§ 621.045 and 190.165.2. The Department has the burden of proving by a preponderance of the evidence that Audsley has committed an act for which the law allows discipline. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

Section 190.165 provides that the license of an emergency medical technician may be disciplined for the following:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate, permit or license required by sections 190.100 to 190.245 or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of sections 190.100 to 190.245 or any lawful regulations promulgated by the department to implement such sections. Those regulations shall be limited to the following:

(2) Being finally adjudicated and found guilty, or having entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to sections 190.100 to 190.245, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Regulation 19 CSR 30-40.365 states:

(2) The department may cause a complaint to be filed with the Administrative Hearing Commission as provided by Chapter 621, RSMo, against any holder of any certificate, permit or license required by the comprehensive emergency medical services systems act or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of the comprehensive emergency medical services systems act or for any of the following reasons:

(B) Being finally adjudicated and found guilty, or having entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to the comprehensive emergency medical services systems act, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Audsley pled guilty to domestic assault in the second degree, defined under § 565.073 as follows:

1. A person commits the crime of domestic assault in the second degree if the act involves a family or household member, including any child who is a member of the family or household, as defined in section 455.010, and he or she:

(1) Attempts to cause or knowingly causes physical injury to such family or household member by any means, including but not limited to, by use of a deadly weapon or dangerous instrument, or by choking or strangulation; or

(2) Recklessly causes serious physical injury to such family or household member; or

(3) Recklessly causes physical injury to such family or household member by means of any deadly weapon.

2. Domestic assault in the second degree is a class C felony.

A. Reasonably Related

Reasonable relation is a low threshold. To relate is to have a logical connection. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11th ed. 2004). The Department argues that the crime of second degree domestic assault is reasonably related to the qualifications, functions or duties of an EMT-Basic. In particular, it points to those portions of the EMT-Basic curriculum⁵ providing that an EMT-Basic should be able to manage her response to stressful situations, should know how to recognize and report crimes related to abuse, should avoid acts or physical force that might cause injury to the patient, and should avoid unnecessary physical contact with patients. The Department also argues that the qualifications of an EMT-Basic include a respect for the law and the rights of others, and that the conduct involved in a second-degree domestic assault displays the opposite of such respect.

While the Department's last argument stretches its point too far – under such an argument, *any* crime would be reasonably related to an EMT's qualifications – we agree that committing the crime of second-degree domestic assault is not indicative of the emotional stability required to deal with stressful situations. We find that the crime of domestic assault is reasonably related to the duties of an EMT.

B. Essential Element

An essential element is one that must be proven for a conviction in every case. *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961). The Department argues that violence is an essential element of the crime of second degree domestic assault. Based on our review of § 565.073, we agree.

⁵ The Department submitted with its motion what appears to be a copy of the entire EMT-Basic curriculum, consisting of 558 pages plus several lengthy appendices. Although the pages are numbered, the Department did not cite to any numbered pages in its motion. Certain portions to which the Department wishes to draw attention are highlighted, but they are difficult to find within the lengthy exhibit. If the Department wishes to use the curriculum guide as an exhibit in the future, we urge it to consider submitting only pertinent excerpts, citing page numbers, or both.

C. Moral Turpitude

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”

In re Frick, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*, 213 S.W.3d 720 (Mo. App., W.D. 2007), a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

Id. at 725. (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)). The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved. *Id.*

Assault-related offenses are Category 3 crimes. “The circumstances surrounding an assault related crime may establish an offense involving moral turpitude.” *Frick*, 694 S.W.2d at 478. Audsley stabbed her husband and, even if he “lunged” at her, as she initially claimed, she procured the knife for potential use in their domestic dispute before he did so. She intentionally

tried to cause substantial physical injury to him. We have little difficulty concluding that Audsley's offense was one involving moral turpitude.

D. Summary of Cause for Discipline under § 190.165.2(2)

We conclude that the crime of second-degree domestic assault is reasonably related to the qualifications, functions and duties of an EMT-Basic. It is also a crime involving moral turpitude, and one of which violence is an essential element. There is cause for discipline under § 190.165.2(2) and under 19 CSR 30-40.365(2)(B).

Summary

There is cause to discipline Audsley's license under § 190.165.2(2) and 19 CSR 30-40.365(2)(B). We grant the motion for summary decision and cancel the hearing.

SO ORDERED on November 5, 2013.

/s/ Karen A. Winn

KAREN A. WINN
Commissioner